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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re D.L., a Person Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent;

v.

T.L.,

Defendant and Appellant.

E064488

(Super.Ct.No. J258902)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher Marshall, Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel and Adam E. Ebright, Deputy County Counsel for Plaintiff and Respondent.

Six-year old D.L., the minor, came to the attention of the San Bernardino County Children and Family Services (CFS) due to allegations that her mother, T.L., subjected her to excessive and unnecessary medical procedures and treatments. The minor, who was the subject of a protracted and bitter custody dispute, was placed with her father and stepmother, and CFS filed a dependency petition alleging she was at risk of abuse in the medical setting (Welf. & Inst. Code, § 300, subd. (b)),<sup>1</sup> and emotional abuse (§ 300, subd. (c)). At the jurisdictional hearing, the juvenile court made true findings on the allegations against mother, then dismissed the dependency with exit orders to family Court, awarding joint legal custody of D.L. to both parents, but awarding primary physical custody to father, with visitation for mother. Mother appealed.

On appeal, mother argued the jurisdictional findings must be reversed because there is insufficient evidence to support the sustained allegations.<sup>2</sup> We affirm.

### **BACKGROUND**

On October 20, 2014, a referral alleging general neglect and caretaker absence was received by CFS, but the referral was closed due to an open family law case. On December 8, 2014, the minor was examined by Dr. Massi, at the Children's Assessment

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

<sup>2</sup> Originally, mother also challenged the dispositional order removing custody from mother, as well as the order terminating the dependency proceedings. However, after the family law custody orders were amended following a report submitted by counsel for the minor, granting mother substantial unsupervised visitation, mother notified this Court that the issues other than jurisdiction are now moot.

Center (CAC). His initial report dated December 8, 2014, which was completed before he had reviewed D.L.'s medical records, indicated child abuse in the medical setting, a form of physical and emotional abuse.

The child was also interviewed by a social worker at CAC, who reported an incident in which the child's stepmother dropped her, causing brief loss of consciousness. The minor indicated her mother was the most important person in her life because she knew of the child's allergies, and informed the interviewer that her father did not take her to the doctor because she did not have allergic reactions. The minor also reported that her father had told her he wished her mother would go away.

On December 30, 2014, after reviewing the minor's medical records for the time period between February 2012 and October 2014, Dr. Massi confirmed his impressions. In his opinion, the mother has exaggerated or falsified symptoms resulting in apparently unnecessary medical evaluations and treatments. However, a diagnosis of factitious disorder (or Munchausen syndrome by proxy) would require an evaluation of the parent by a psychiatrist. The report was forwarded to the family law court. Following the CAC interview, mother took the child to the emergency room on two separate occasions: once based on a complaint of sore throat, and the second time for an alleged ankle injury, although an x-ray revealed no injuries.

On February 19, 2015, the family law court commissioner referred the case to CFS due to fear the child should not be in mother's custody. However, because the

information contained in the investigative reports was hearsay, the family law commissioner could not base a custody decision on them.

On February 24, 2015, CFS filed a dependency petition pursuant to section 300, subdivisions (b) and (c). Specifically, the petition alleged the child was at risk of harm due to mother's inability to provide regular care due to a mental illness, by having the child undergo unnecessary medical procedures, and that father knew or should have known of the risk. The petition further alleged the child was at risk of emotional abuse related to being subjected to unnecessary medical procedures and treatment. At the detention hearing, the child was placed in father's home.

In the report submitted by the social worker for the jurisdiction hearing, the social worker expressed numerous concerns about the parents' ability to work together as a co-parenting team. For father's part, the child was not permitted to keep belongings she had brought from mother's residence, and he spoke about mother in negative terms in the child's presence. The social worker commented that many of the custody arguments were initiated by the stepmother. For mother's part, further concern was generated when mother canceled a medical appointment for the child that had been made by father. Although mother denied taking such action, Kaiser's records revealed that the phone call in which the appointment was canceled came from mother's telephone. Mother also called police for a welfare check on the minor at father's home, late at night.

On April 15, 2015, the social worker provided an addendum report in which the minor expressed the wish to live with each parent half time. The report also noted that

during the time minor had been placed in father's home, she had not been ill, needed emergency care, or suffered any allergic reactions of any kind. This reaffirmed the social worker's opinion that the minor had been subjected to unnecessary and excessive medical testing and treatment while in mother's custody.

On June 25, 2015, another addendum report was submitted by the social worker. The social worker recommended that the court enter a true finding as to the allegations of the petition and maintain the child in the custody of father and mother under a 50-50 monitored maintenance program. The report noted that mother had made significant progress in alleviating the risks that led to CFS intervention, had completed her case plan, and was willing to allow CFS to monitor the child's medical care so it would not become excessive.

At this point, the social worker's main concern was the ability of the parents to work together to co-parent the child. While mother had been careful to redirect conversations away from the topic of father and stepmother, it was apparent that father and stepmother had told the child her mother was a danger to her and coached her. They told the minor that mother had given the child contaminated water during monitored visitation, notwithstanding the fact the only water provided to the child was in a sealed container provided by the visitation monitor.

Additionally, the stepmother would park near the visitation center to watch visits, and then quizzed the child afterwards. Nevertheless, the visits went well and the reports

by the visitation monitor repeatedly noted the strong bond between the child and her mother.

At the next court hearing on May 13, 2015, father's counsel objected to a continuance requested by mother. He asserted that father believed the child was in danger and that mother was violating court orders by bringing water and other items to the visits. The court continued the matter and directed the social worker to submit a "6.7"<sup>3</sup> addressing the visitation issues.

The subsequent informational report by the social worker, submitted on July 1, 2015, included visitation reports and certificates evidencing mother's completion of the court ordered case plan. The monitor noted the child made comments about remarks made by the stepmother indicating that the father and stepmother intended to alienate the child from mother. They even began calling the child by her middle name instead of her first name. Overall, the reports of visits regularly commented the child was happy to see her mother, the positive manner in which mother incorporated what she had learned in parenting education, and how the father and stepmother attempted to undermine the relationship.

On July 1, 2015, minor's counsel requested psychological evaluations of both parents. Father's counsel sought an order suspending visits, or, in the alternative, a change of visitation monitors due to his continued concerns that mother was giving the child things during the visits and that the visits were not taking place at the CFS office as

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<sup>3</sup> A form, CFS 6.7 (03/13) is used to provide additional information to the court.

directed by the court. In fact, father's counsel told the court that some visits were occurring inside mother's vehicle.

Based on the reports made by the visitation monitor, which refuted father's concerns, the court declined to suspend mother's visits, and refused to order a different visitation monitor. To the contrary, the court gave the social worker authority to increase mother's visits both in duration and frequency. The court also ordered both parents to undergo psychological evaluations. The court also lectured the parents not to discuss the matter with the child and ordered that stepmother was not to attend visits between mother and child.

In a non-appearance review packet submitted on July 8, 2015, the social worker requested a modification of visitation, making it unsupervised, because mother had completed her case plan and was scheduled to undergo her psychological evaluation. Minor's counsel objected to the change pending receipt of the evaluation because the minor was fearful of unmonitored visitation because she had been subjected to alienation by the father and stepmother who have impressed upon her that mother would make her sick. On July 31, 2015, the court reminded the parents there should be no disparaging or negative comments made about the other parent in front of the child.

The report of mother's psychological evaluation was submitted with additional information to the court on August 27, 2015. The psychologist diagnosed mother as suffering from factitious disorder imposed upon another. Given the degree to which mother minimized, denied, and lacked insight into her problems, the evaluator's opinion

was that she posed a risk to the child. Father's psychological evaluation was submitted later, indicating he did not have any diagnosable disorders. As a result of the evaluation of mother, however, CFS withdrew its packet dated July 8, 2015, regarding unsupervised visitation for mother. Likewise, the court declined to order unsupervised visits.

On September 10, 2015, the matter came on for jurisdictional and dispositional hearings. The court received all the reports and evaluations in evidence, dismissed the allegations against the father, and found true each of the allegations against the mother. The court found the child came within section 300, subdivisions (b) and (c), and removed the child from mother's custody. The court placed the child in the home of the father and a family law court order was issued. The court then terminated jurisdiction with joint legal custody to both parents, physical custody to father, and supervised visitation to mother.

Mother appealed.

### **DISCUSSION**

By reason of subsequent family law court orders, the only remaining issue to be decided in this appeal is whether there was sufficient evidence upon which the court could assert the jurisdiction of the juvenile court. Mother asserts there is not. We disagree.

At the jurisdictional hearing, the juvenile court determines whether the child is described by one or more subdivisions of section 300. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1432.) Under section 300, subdivision (b), the agency must show by a



preponderance of the evidence that the parent’s neglectful conduct has caused the child to suffer serious physical harm or illness, or creates a substantial risk that the child will suffer such harm or illness. (*In re J.K.*, at p. 1432; § 355, subd. (a).) “‘The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.’ [Citation.]” (*In re A.S.* (2011) 202 Cal.App.4th 237, 243-244.) We are limited in our review to evidence that was presented to the trial court; we may not consider postjudgment evidence. (*In re Zeth S.* (2003) 31 Cal.4th 396, 413.)

On appeal, we employ the “substantial evidence” standard of review for both the jurisdictional and dispositional findings. (*In re J.K.*, *supra*, 174 Cal.App.4th at p. 1433.) “We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary finding.” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order.” (*Id.* at p. 133.) We proceed to examine each ground for jurisdiction.

A. *Mental Illness*

Section 300, subdivision (b), applies when “the minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of the parent to adequately supervise or protect the minor, or by the willful or negligent failure of the parent to provide the minor with adequate food,

clothing, shelter, or medical treatment, or by the inability of the parent to provide regular care for the minor due to the parent's mental illness or substance abuse.” (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1319, citing *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820-824.) “We review the juvenile court's findings under section 300 for substantial evidence and will affirm the judgment based on those findings if they are supported by reasonable, credible evidence of solid value.” (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1160.)

“[A] court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent . . . which indicate the child is at risk of serious physical harm.” [Citation.]” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598.) The child need not have been actually harmed in order for the court to assume jurisdiction. (See *In re James R.* (2009) 176 Cal.App.4th 129, 135.) In the juvenile court, the agency has the burden of proof by a preponderance of the evidence. (*In re Matthew S.*, *supra*, 41 Cal.App.4th at p. 1318.)

“Harm to the child cannot be presumed from the mere fact of mental illness of the parent . . . .” (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 540; see also, *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1652.) The proper basis for a ruling that a parent's mental illness poses a risk to the child is expert testimony giving specific examples of the manner in which the mother's behavior has and will adversely affect the child or jeopardize the child's safety. (*In re Jamie M.*, *supra*, 134 Cal.App.3d at p. 540.)

Here, the court relied upon reports, including a psychological evaluation diagnosing mother as suffering from factitious disorder imposed upon another, in finding jurisdiction based on section 300, subdivision (b). The CAC interview detailed the medical records for the child, noting numerous instances in which the mother described symptoms that were not supported by objective findings, and several tests—including CT scans and 12<sup>4</sup> emergency department visits in a two year period—as well as requests for medications, that were medically unnecessary. None of these symptoms or medical issues manifested after the child was placed with her father.

Mother argues that the court did not have adequate or accurate psychological evaluations to make a determination that mother suffered from the diagnosis of factitious disorder imposed upon another (or by proxy). However, the psychological evaluation of Dr. Yang, who made the diagnosis, was admitted into evidence without question or objection. Further, although mother at one point indicated an intention of hiring an independent expert, no independent expert evaluation was proffered to refute the findings of the court ordered evaluator. Any challenge to the accuracy or adequacy of the evaluation that was admitted into evidence was forfeited. (See *In re A.A.* (2008) 167 Cal.App.4th 1292, 1317, citing *In re Brian P.* (2002) 99 Cal.App.4th 616, 623.) The juvenile court was therefore permitted to consider the psychological evaluation in ruling on the allegations.

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<sup>4</sup> This number includes the two emergency room visits after the CAC assessment had been conducted.

Mother also argues that there was no evidence that at the time of the jurisdiction hearing the child was at risk of serious physical harm in the future. We are cognizant of the fact that the unnecessary medical appointments and treatments did not continue after the detention of the child with her father, but we cannot conclude that the problem was no longer current at the time of the jurisdiction hearing as mother has suggested. (See *In re Robert L.* (1998) 68 Cal.App.4th 789, 794, citing *In re Melissa H.* (1974) 38 Cal.App.3d 173, 175 [exercise of jurisdiction must be based upon existing and reasonably foreseeable future harm to the welfare of the child].) Throughout the proceedings leading up to the jurisdictional hearing, mother refused to acknowledge she had a problem or that she had subjected the child to unnecessary treatment.<sup>5</sup>

By way of a supplemental letter brief, mother submitted a report made by counsel appointed for the minor by the family law court, who recommended unsupervised visitation for the mother. In that letter, minor's counsel determined that the majority of the medical appointments and treatments were, in fact, justified, and that father participated in the medical decisions. However, that information was not before the juvenile court at the time of the jurisdictional findings, so we cannot consider it. Given mother's conduct in seeking excessive medical treatment for the child, and the diagnosis of factitious disorder imposed upon another, which mother did not acknowledge or

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<sup>5</sup> Even after the child was evaluated by CAC, mother took her to the emergency department twice for minor symptoms or nonexistent injury.

address with services up to the time of the hearing, the jurisdictional findings were justified.

B. *Emotional Abuse*

A child may be a person described by section 300, subdivision (c), where parental action or inaction causes emotional harm to the child, or where the child suffers from emotional harm but the parent is unable to or fails to obtain treatment. (See *In re Alexander K.* (1993) 14 Cal.App.4th 549, 557; see also, *In re K.S.* (2016) 244 Cal.App.4th 327, 337; *In re Roxanne B.* (2015) 234 Cal.App.4th 916, 921.) The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child. (*In re I.J.* (2013) 56 Cal.4th 766, 773, citing *In re R.V.* (2012) 208 Cal.App.4th 837, 843.) Section 300, subdivision (c), extends both to a child who is suffering serious emotional damage and a child who is at *substantial risk* of suffering serious emotional damage. (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1104, italics added.)

Here, the court considered the social worker's reports, which incorporated the visitation logs and the CAC assessments. The social worker's assessment, as set out in the jurisdictional report, indicates that the family law documents supported the social worker's opinion that the minor had experienced emotional abuse by both parents as to excessive medical care and lengthy custody proceedings. Dr. Massi's report stated his opinion that mother's beliefs regarding illness are potentially psychologically harmful to

the child who will require mental health services. In fact, Dr. Massi stated that some of the symptoms reported, if true, could be explained by a mood disorder.

Finally, the visitation logs include repeated references to the child's behavior as withdrawn, subdued, guarded, or evasive. We recognize that father and stepmother were not blameless, despite the dismissal of the allegations attributing any fault to father. There was ample evidence that they attempted to undermine the mother-child relationship. Nevertheless, the child appeared to be happy and adjusted in father's home. Since the placement with her father, the child had not been ill, needed emergency care, or had an allergic reaction of any kind.

Mother did not introduce any affirmative evidence to contradict the evidence submitted to the court in support of the petition. There is substantial evidence to support the true finding on the allegations relating to section 300, subdivision (c). Because all other issues raised on appeal are now moot, the judgment must be affirmed.

#### **DISPOSITION**

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

McKINSTER

J.

CODRINGTON

J.